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## Calendar No. 876

91st CONGRESS  
2d SESSION

# S. 782

[Report No. 91-873]

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### IN THE SENATE OF THE UNITED STATES

JANUARY 31, 1969

Mr. ERVIN (for himself, Mr. BAYH, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. BYRD of Virginia, Mr. CHURCH, Mr. COOK, Mr. COOPER, Mr. DODD, Mr. DOLE, Mr. DOMINICK, Mr. EAGLETON, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. GRAVEL, Mr. GURNEY, Mr. HANSEN, Mr. HARTKE, Mr. HATFIELD, Mr. HRUSKA, Mr. INOUYE, Mr. JORDAN of North Carolina, Mr. JORDAN of IDAHO, Mr. McCARTHY, Mr. McGEE, Mr. McGOVERN, Mr. McINTYRE, Mr. MAGNUSON, Mr. MATHIAS, Mr. METCALF, Mr. MILLER, Mr. MONTOYA, Mr. MUNDT, Mr. MURPHY, Mr. MUSKIE, Mr. NELSON, Mr. PEARSON, Mr. PERCY, Mr. PROUTY, Mr. PROXIMIRE, Mr. RANDOLPH, Mr. SAXBE, Mr. SCHWEIKER, Mr. SCOTT, Mr. SPARKMAN, Mr. SONG, Mr. STEVENS, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, Mr. TYDINGS, Mr. WILLIAMS of New Jersey, and Mr. YARBOROUGH) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 15, 1970

Reported by Mr. ERVIN, with amendments

[Omit the part struck through and insert the part printed in italic]

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## A BILL

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

- 1      *Be it enacted by the Senate and House of Representa-*
- 2      *tives of the United States of America in Congress assembled,*
- 3      **SECTION 1.** It shall be unlawful for any officer of any

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1 executive department or any executive agency of the United  
2 States Government, or for any person acting or purporting  
3 to act under his authority, to do any of the following things:  
4 (a) To require or request, or to attempt to require or  
5 request, any civilian employee of the United States serving  
6 in the department or agency, or any person seeking employ-  
7 ment in the executive branch of the United States Govern-  
8 ment, to disclose his race, religion, or national origin, or  
9 the race, religion, or national origin of any of his fore-  
10 bears: *Provided, however,* That nothing contained in this  
11 subsection shall be construed to prohibit inquiry concerning  
12 the citizenship of any such employee or person if his citizen-  
13 ship is a statutory condition of his obtaining or retaining his  
14 employment: *Provided further,* That nothing contained in  
15 this subsection shall be construed to prohibit inquiry concern-  
16 ing the national origin or citizenship of any such employee or  
17 person or of his forebears, when such inquiry is deemed  
18 necessary or advisable to determine suitability for assignment  
19 to activities or undertakings related to the national security  
20 within the United States or to activities or undertakings of  
21 any nature outside the United States.  
22 (b) To state or intimate, or to attempt to state or inti-  
23 mate, to any civilian employee of the United States serving  
24 in the department or agency that any notice will be taken of  
25 his attendance or lack of attendance at any assemblage, dis-

1 cussion, or lecture held or called by any officer of the execu-  
2 tive branch of the United States Government, or by any per-  
3 son acting or purporting to act under his authority, or by any  
4 outside parties or organizations to advise, instruct, or in-  
5 doctrinate any civilian employee of the United States serving  
6 in the department or agency in respect to any matter or  
7 subject other than the performance of official duties to which  
8 he is or may be assigned in the department or agency, or  
9 the development of skills, knowledge, or abilities which  
10 qualify him for the performance of such duties: *Provided*,  
11 *however*, That nothing contained in this subsection shall be  
12 construed to prohibit taking notice of the participation of a  
13 civilian employee in the activities of any professional group  
14 or association.

15 (c) To require or request, or to attempt to require or  
16 request, any civilian employee of the United States serving  
17 in the department or agency to participate in any way in  
18 any activities or undertakings unless such activities or under-  
19 takings are related to the performance of official duties to  
20 which he is or may be assigned in the department or agency,  
21 or to the development of skills, knowledge, or abilities which  
22 qualify him for the performance of such duties.

23 (d) To require or request, or to attempt to require  
24 or request, any civilian employee of the United States serv-  
25 ing in the department or agency to make any report con-

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cerning any of his activities or undertakings unless such

2 activities or undertakings are related to the performance of  
3 official duties to which he is or may be assigned in the  
4 department or agency, or to the development of skills, knowl-  
5 edge, or abilities which qualify him for the performance of  
6 such duties, or unless there is reason to believe that the  
7 civilian employee is engaged in outside activities or employ-  
8 ment in conflict with his official duties.

9 (e) To require or request, or to attempt to require or  
10 request, any civilian employee of the United States serving  
11 in the department or agency, or any person applying for  
12 employment as a civilian employee in the executive branch  
13 of the United States Government, to submit to any interroga-  
14 tion or examination or to take any psychological test which  
15 is designed to elicit from him information concerning his  
16 personal relationship with any person connected with him  
17 by blood or marriage, or concerning his religious beliefs or  
18 practices, or concerning his attitude or conduct with respect  
19 to sexual matters: *Provided, however,* That nothing con-  
20 tained in this subsection shall be construed to prevent  
21 a physician from eliciting such information or authorizing  
22 such tests in the diagnosis or treatment of any civilian  
23 employee or applicant where such physician deems such  
24 information necessary to enable him to determine whether  
25 or not such individual is suffering from mental illness: *Pro-*

1      *vided further, however, That this determination shall be made*  
2      *in individual cases and not pursuant to general practice or*  
3      *regulation governing the examination of employees or appli-*  
4      *cants according to grade, agency, or duties: Provided further,*  
5      *however, That nothing contained in this subsection shall be*  
6      *construed to prohibit an officer of the department or agency*  
7      *from advising any civilian employee or applicant of a specific*  
8      *charge of sexual misconduct made against that person, and*  
9      *affording him an opportunity to refute the charge.*

10     (f) To require or request, or attempt to require or  
11    request, any civilian employee of the United States serving  
12    in the department or agency, or any person applying for  
13    employment as a civilian employee in the executive branch  
14    of the United States Government, to take any polygraph  
15    test designed to elicit from him information concerning his  
16    personal relationship with any person connected with him  
17    by blood or marriage, or concerning his religious beliefs or  
18    practices, or concerning his attitude or conduct with respect  
19    to sexual matters.

20     (g) To require or request, or to attempt to require  
21    or request, any civilian employee of the United States serving  
22    in the department or agency to support by personal endeavor  
23    or contribution of money or any other thing of value the  
24    nomination or the election of any person or group of persons  
25    to public office in the Government of the United States or of

1 any State, district, Commonwealth, territory, or possession  
2 of the United States, or to attend any meeting held to pro-  
3 mote or support the activities or undertakings of any political  
4 party of the United States or of any State, district, Common-  
5 wealth, territory, or possession of the United States.

6 (h) To coerce or attempt to coerce any civilian  
7 employee of the United States serving in the department or  
8 agency to invest his earnings in bonds or other obligations  
9 or securities issued by the United States or any of its depart-  
10 ments or agencies, or to make donations to any institution  
11 or cause of any kind: *Provided, however,* That nothing con-  
12 tained in this subsection shall be construed to prohibit any  
13 officer of any executive department or any executive agency  
14 of the United States Government, or any person acting or  
15 purporting to act under his authority, from calling meetings  
16 and taking any action appropriate to afford any civilian em-  
17 ployee of the United States the opportunity voluntarily to  
18 invest his earnings in bonds or other obligations or securities  
19 issued by the United States or any of its departments or  
20 agencies, or voluntarily to make donations to any institution  
21 or cause.

22 (i) To require or request, or to attempt to require  
23 or request, any civilian employee of the United States  
24 serving in the department or agency to disclose any items  
25 of his property, income, or other assets, source of income,

1 or liabilities, or his personal or domestic expenditures or  
2 those of any member of his family or household: *Provided*,  
3 *however*, That this subsection shall not apply to any civilian  
4 employee who has authority to make any final determination  
5 with respect to the tax or other liability of any person, cor-  
6 poration, or other legal entity to the United States, or  
7 claims which require expenditure of moneys of the United  
8 States: *Provided further, however*, That nothing contained  
9 in this subsection shall prohibit the Department of the  
10 Treasury or any other executive department or agency of  
11 the United States Government from requiring any civilian  
12 employee of the United States to make such reports as may  
13 be necessary or appropriate for the determination of his  
14 liability for taxes, tariffs, custom duties, or other obliga-  
15 tions imposed by law.

16 (j) To require or request, or to attempt to require  
17 or request, any civilian employee of the United States  
18 embraced within the terms of the proviso in subsection  
19 (i) to disclose any items of his property, income, or  
20 other assets, source of income, or liabilities, or his personal  
21 or domestic expenditures or those of any member of his  
22 family or household other than specific items tending to  
23 indicate a conflict of interest in respect to the perform-  
24 ance of any of the official duties to which he is or may be  
25 assigned.

1       (k) To require or request, or to attempt to require or  
2 request, any civilian employee of the United States serving  
3 in the department or agency, who is under investigation for  
4 misconduct, to submit to interrogation which could lead to  
5 disciplinary action without the presence of counsel or other  
6 person of his choice, if he so requests: Provided, however,  
7 That a civilian employee of the United States serving in the  
8 Central Intelligence Agency or the National Security Agency  
9 may be accompanied only by a person of his choice who serves  
10 in the agency in which the employee serves, or by counsel who  
11 has been approved by the agency for access to the information  
12 involved.

13       (1) To discharge, discipline, demote, deny promotion  
14 to, relocate, reassign, or otherwise discriminate in regard to  
15 any term or condition of employment of, any civilian em-  
16 ployee of the United States serving in the department or  
17 agency, or to threaten to commit any of such acts, by reason  
18 of the refusal or failure of such employee to submit to or  
19 comply with any requirement, request, or action made un-  
20 lawful by this Act, or by reason of the exercise by such  
21 civilian employee of any right granted or secured by this  
22 Act.

23       SEC. 2. It shall be unlawful for any officer of the United  
24 States Civil Service Commission, or for any person acting  
25 or purporting to act under his authority, to do any of the

1       (a) To require or request, or to attempt to require or  
2       request, any executive department or any executive agency  
3       of the United States Government, or any officer or employee  
4       serving in such department or agency, to violate any of the  
5       provisions of section 1 of this Act.

6       (b) To require or request; or to attempt to require or  
7       request, any person seeking to establish civil service status  
8       or eligibility for employment in the executive branch of the  
9       United States Government, or any person applying for em-  
10      ployment in the executive branch of the United States Gov-  
11      ernment, or any civilian employee of the United States  
12      serving in any department or agency of the United States  
13      Government, to submit to any interrogation or examination  
14      or to take any psychological test which is designed to elicit  
15      from him information concerning his personal relationship  
16      with any person connected with him by blood or marriage,  
17      or concerning his religious beliefs or practices, or concerning  
18      his attitude or conduct with respect to sexual matters: *Pro-*  
19      *vided, however,* That nothing contained in this subsection  
20      shall be construed to prevent a physician from eliciting such  
21      information or authorizing such tests in the diagnosis or  
22      treatment of any civilian employee or applicant where such  
23      physician deems such information necessary to enable him  
24      to determine whether or not such individual is suffering  
25      from mental illness: *Provided further, however,* That this

1 determination shall be made in individual cases and not pur-  
2 suant to general practice or regulation governing the exami-  
3 nation of employees or applicants according to grade, agency,  
4 or duties: *Provided further, however,* That nothing contained  
5 in this subsection shall be construed to prohibit an officer of  
6 the Civil Service Commission from advising any civilian  
7 employee or applicant of a specific charge of sexual miscon-  
8 duct made against that person, and affording him an oppor-  
9 tunity to refute the charge.

10 (c) To require or request, or to attempt to require  
11 or request, any person seeking to establish civil service  
12 status or eligibility for employment in the executive branch  
13 of the United States Government, or any person applying  
14 for employment in the executive branch of the United States  
15 Government, or any civilian employee of the United States  
16 serving in any department or agency of the United States  
17 Government, to take any polygraph test designed to elicit  
18 from him information concerning his personal relationship  
19 with any person connected with him by blood or marriage,  
20 or concerning his religious beliefs or practices, or concerning  
21 his attitude or conduct with respect to sexual matters.

22 SEC. 3. It shall be unlawful for any commissioned officer,  
23 as defined in section 101 of title 10, United States Code, or  
24 any member of the Armed Forces acting or purporting to  
25 act under his authority, to require or request, or to attempt

1 to require or request, any civilian employee of the executive  
2 branch of the United States Government under his authority  
3 or subject to his supervision to perform any of the acts or  
4 submit to any of the requirements made unlawful by section  
5 1 of this Act.

6 SEC. 4. Whenever any officer of any executive depart-  
7 ment or any executive agency of the United States Gov-  
8 ernment, or any person acting or purporting to act under his  
9 authority, or any commissioned officer as defined in section  
10 101 of title 10, United States Code, or any member of the  
11 Armed Forces acting or purporting to act under his author-  
12 ity, violates or threatens to violate any of the provisions of  
13 section 1, 2, or 3 of this Act, any civilian employee of the  
14 United States serving in any department or agency of the  
15 United States Government, or any person applying for  
16 employment in the executive branch of the United States  
17 Government, or any person seeking to establish civil service  
18 status or eligibility for employment in the executive branch  
19 of the United States Government, affected or aggrieved by  
20 the violation or threatened violation, may bring a civil action  
21 in his own behalf or in behalf of himself and others  
22 similarly situated, against the offending officer or person in  
23 the United States district court for the district in which the  
24 violation occurs or is threatened, or the district in which the  
25 offending officer or person is found, or in the United States

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1 District Court for the District of Columbia, to prevent  
2 the threatened violation or to obtain redress against the  
3 consequences of the violation. The Attorney General shall  
4 defend all officers or persons sued under this section  
5 who acted pursuant to an order, regulation, or directive,  
6 or who, in his opinion, did not willfully violate the  
7 provisions of this Act. Such United States district court  
8 shall have jurisdiction to try and determine such civil action  
9 irrespective of the actuality or amount of pecuniary injury  
10 done or threatened, and without regard to whether the  
11 aggrieved party shall have exhausted any administrative  
12 remedies that may be provided by law, and to issue such  
13 restraining order, interlocutory injunction, permanent in-  
14 junction, or mandatory injunction, or enter such other judg-  
15 ment or decree as may be necessary or appropriate to prevent  
16 the threatened violation, or to afford the plaintiff and others  
17 similarly situated complete relief against the consequences of  
18 the violation. With the written consent of any person  
19 affected or aggrieved by a violation or threatened violation  
20 of section 1, 2, or 3 of this Act, any employee organization  
21 may bring such action on behalf of such person, or may  
22 intervene in such action. For the purposes of this section,  
23 employee organizations shall be construed to include any  
24 brotherhood, council, federation, organization, union, or pro-  
25 fessional association made up in whole or in part of civilian

1 employees of the United States and which has as one of its  
2 purposes dealing with departments, agencies, commissions,  
3 and independent agencies of the United States concerning  
4 the condition and terms of employment of such employees.

5 SEC. 5. (a) There is hereby established a Board on  
6 Employees' Rights (hereinafter referred to as the "Board").

7 The Board shall be composed of three members, appointed  
8 by the President, by and with the advice and consent of the  
9 Senate. The President shall designate one member as chair-  
10 man. No more than two members of the Board may be of  
11 the same political party. No member of the Board shall be  
12 an officer or employee of the United States Government.

13 (b) The term of office of each member of the Board  
14 shall be five years, except that (1) of those members first  
15 appointed, one shall serve for five years, one for three years,  
16 and one for one year, respectively, from the date of enact-  
17 ment of this Act, and (2) any member appointed to fill  
18 a vacancy occurring prior to the expiration of the term for  
19 which his predecessor was appointed shall be appointed for  
20 the remainder of such term.

21 (c) Members of the Board shall be compensated at the  
22 rate of \$75 a day for each day spent in the work of the  
23 Board, and shall be paid actual travel expenses and per  
24 diem in lieu of subsistence expenses when away from their

1 usual places of residence, as authorized by section 5703 of  
2 title 5, United States Code.

3 (d) Two members shall constitute a quorum for the  
4 transaction of business.

5 (e) The Board may appoint and fix the compensation  
6 of such officers, attorneys, and employees, and make such  
7 expenditures, as may be necessary to carry out its functions.

8 (f) The Board shall make such rules and regulations  
9 as shall be necessary and proper to carry out its functions.

10 (g) The Board shall have the authority and duty to  
11 receive and investigate written complaints from or on be-  
12 half of any person claiming to be affected or aggrieved by  
13 any violation or threatened violation of this Act and to con-  
14 duct a hearing on each such complaint. Within ten days  
15 after the receipt of any such complaint, the Board shall  
16 furnish notice of the time, place, and nature of the hearing  
17 thereon to all interested parties. The Board shall render  
18 its final decision with respect to any complaint within thirty  
19 days after the conclusion of its hearing thereon.

20 (h) Officers or representatives of any Federal employee  
21 organization in any degree concerned with employment of  
22 the category in which any alleged violation of this Act  
23 occurred or is threatened shall be given an opportunity to  
24 participate in each hearing conducted under this section,  
25 through submission of written data, views, or arguments,

1 and in the discretion of the Board, with opportunity for oral  
2 presentation. Government employees called upon by any  
3 party or by any Federal employee organization to participate  
4 in any phase of any administrative or judicial proceeding  
5 under this section shall be free to do so without incurring  
6 travel cost or suffering loss in leave or pay; and all such em-  
7 ployees shall be free from restraint, coercion, interference,  
8 intimidation, or reprisal in or because of their participation.  
9 Any periods of time spent by Government employees during  
10 such participation shall be held and considered to be Federal  
11 employment for all purposes.

12 (i) Insofar as consistent with the purposes of this sec-  
13 tion, the provisions of subchapter II of chapter 5 of title 5,  
14 United States Code, relating to the furnishing of notice and  
15 manner of conducting agency hearings, shall be applicable  
16 to hearings conducted by the Board under this section.

17 (j) If the Board shall determine after hearing that a  
18 violation of this Act has not occurred or is not threatened,  
19 the Board shall state its determination and notify all inter-  
20 ested parties of such determination. Each such determina-  
21 tion shall constitute a final decision of the Board for pur-  
22 poses of judicial review.

23 (k) If the Board shall determine that any violation  
24 of this Act has been committed or threatened by any civil-  
25 ian officer or employee of the United States, the Board shall

1 immediately (1) issue and cause to be served on such of-

2 ficer or employee an order requiring such officer or employee

3 to cease and desist from the unlawful act or practice which

4 constitutes a violation, (2) endeavor to eliminate any such

5 unlawful act or practice by informal methods of conference,

6 conciliation, and persuasion, and (3) may—

7 (A) (i) in the case of the first offense by any

8 civilian officer or employee of the United States, other

9 than any officer appointed by the President, by and with

10 the advice and consent of the Senate, issue an official

11 reprimand against such officer or employee or order the

12 suspension without pay of such officer or employee from

13 the position or office held by him for a period of not to

14 exceed fifteen days, and (ii) in the case of a second

15 or subsequent offense by any such officer or employee,

16 order the suspension without pay of such officer or em-

17 ployee from the position or office held by him for a

18 period of not to exceed thirty days or order the removal

19 of such officer or employee from such position or office;

20 and

21 (B) in the case of any offense by any officer ap-

22 pointed by the President, by and with the advice and

23 consent of the Senate, transmit a report concerning such

24 violation to the President and the Congress.

25 (l) If the Board shall determine that any violation

1 of this Act has been committed or threatened by any officer  
2 of any of the Armed Forces of the United States, or any  
3 person purporting to act under authority conferred by such  
4 officer, the Board shall (1) submit a report thereon to the  
5 President, the Congress, and the Secretary of the military  
6 department concerned, (2) endeavor to eliminate any un-  
7 lawful act or practice which constitutes such a violation by  
8 informal methods of conference, conciliation, and persuasion,  
9 and (3) refer its determination and the record in the case  
10 to any person authorized to convene general courts-martial  
11 under section 822 (article 22) of title 10, United States  
12 Code. Thereupon such person shall take immediate steps  
13 to dispose of the matter under chapter 47 of title 10, United  
14 States Code (Uniform Code of Military Justice).

15 (m) Any party aggrieved by any final determination  
16 or order of the Board may institute, in the district court of  
17 the United States for the judicial district wherin the viola-  
18 tion or threatened violation of this Act occurred, or in the  
19 United States District Court for the District of Columbia,  
20 a civil action for the review of such determination or order.  
21 In any such action, the court shall have jurisdiction to (1)  
22 affirm, modify, or set aside any determination or order made  
23 by the Board which is under review, or (2) require the  
24 Board to make any determination or order which it is author-  
25 ized to make under subsection (k), but which it has refused

1 to make. The reviewing court shall set aside any finding,  
2 conclusion, determination, or order of the Board as to which  
3 complaint is made which is unsupported by substantial evi-  
4 dence on the record considered as a whole.

5 (n) The Board shall submit, not later than March 31  
6 of each year, to the Senate and House of Representatives,  
7 respectively, a report on its activities under this section dur-  
8 ing the immediately preceding calendar year, including a  
9 statement concerning the nature of all complaints filed with  
10 it, its determinations and orders resulting from hearings  
11 thereon, and the names of all officers or employees of the  
12 United States with respect to whom any penalties have been  
13 imposed under this section.

14 (o) There are authorized to be appropriated sums nec-  
15 essary, not in excess of \$100,000, to carry out the provisions  
16 of this section.

17 SEC. 6. Nothing contained in this Act shall be construed  
18 to prohibit an officer of the Central Intelligence Agency or  
19 of the National Security Agency or of the Federal  
20 Bureau of Investigation from requesting any civilian em-  
21 ployee or applicant to take a polygraph test, or to take a  
22 psychological test, designed to elicit from him information  
23 concerning his personal relationship with any person con-  
24 nected with him by blood or marriage, or concerning his  
25 religious beliefs or practices, or concerning his attitude or

1 conduct with respect to sexual matters, or to provide a per-  
2 sonal financial statement, if the Director of the Central  
3 Intelligence Agency or his designee or the Director of the  
4 National Security Agency or his designee or the Director  
5 of the Federal Bureau of Investigation or his designee makes  
6 a personal finding with regard to each individual to be so  
7 tested or examined that such test or information is required  
8 to protect the national security.

9       *SEC. 7. No civilian employee of the United States serving*  
10      *in the Central Intelligence Agency or the National Security*  
11      *Agency, and no individual or organization acting in behalf*  
12      *of such employee, shall be permitted to invoke the provisions*  
13      *of sections 4 and 5 without first submitting a written com-*  
14      *plaint to the agency concerned about the threatened or actual*  
15      *violation of this Act and affording such agency one hundred*  
16      *and twenty days from the date of such complaint to prevent*  
17      *the threatened violation or to redress the actual violation:*  
18      *Provided, however, That nothing in this Act shall be con-*  
19      *strued to affect any existing authority of the Director of Cen-*  
20      *tral Intelligence under section 403(c), of title 50, United*  
21      *States Code, and any authorities available to the National*  
22      *Security Agency under section 833 of title 50, United States*  
23      *Code, to terminate the employment of any employee.*

24       *SEC. 8. Nothing in this Act shall be construed to affect*  
25      *in any way the authority of the Directors of the Central*

1 *Intelligence Agency or the National Security Agency to pro-*  
2 *tect or withhold information pursuant to statute or executive*  
3 *order. The personal certification by the Director of the agency*  
4 *that disclosure of any information is inconsistent with the*  
5 *provision of any statute or executive order shall be conclusive*  
6 *and no such information shall be admissible in evidence in*  
7 *any interrogation under section 1(k) or in any civil action*  
8 *under section 4 or in any proceeding or civil action under*  
9 *section 5.*

10        *SEC. 9. This Act shall not be applicable to the Federal*  
11 *Bureau of Investigation.*

12        *SEC. 7 10. Nothing contained in sections 4 and 5 shall*  
13 *be construed to prevent establishment of department and*  
14 *agency grievance procedures to enforce this Act, but the*  
15 *existence of such procedures shall not preclude any applicant*  
16 *or employee from pursuing the remedies established by this*  
17 *Act or any other remedies provided by law: *Provided*,*  
18 *however, That if under the procedures established, the em-*  
19 *ployee or applicant has obtained complete protection against*  
20 *threatened violations or complete redress for violations, such*  
21 *action may be pleaded in bar in the United States district*  
22 *court or in proceedings before the Board on Employee*  
23 *Rights: *And provided further, That if an employee elects**  
24 *to seek a remedy under either section 4 or section 5, he*

- 1 waives his right to proceed by an independent action under
- 2 the remaining section.

3 SEC. 8 11. If any provision of this Act or the application  
4 of any provision to any person or circumstance shall be held  
5 invalid, the remainder of this Act or the application of such  
6 provision to persons or circumstances other than those as to  
7 which it is held invalid, shall not be affected.

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**A BILL**

To protect the civilian employees of the executive branch of the United States Government in the enjoyment of their constitutional rights and to prevent unwarranted governmental invasions of their privacy.

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By Mr. ERVIN, Mr. BAYH, Mr. BIBLE, Mr. BROOKE, Mr. BURDICK, Mr. BYRD of Virginia, Mr. CHURCH, Mr. COOK, Mr. COOPER, Mr. DODD, Mr. DOLE, Mr. DOMINICK, Mr. EAGLETON, Mr. FANNIN, Mr. FONG, Mr. GOLDWATER, Mr. GRAVEL, Mr. GURNEY, Mr. HANSEN, Mr. HARTKE, Mr. HATFIELD, Mr. HRUSKA, Mr. INOUYE, Mr. JORDAN of North Carolina, Mr. JORDAN of Idaho, Mr. McCARTHY, Mr. McGEE, Mr. McGOVERN, Mr. MCINTYRE, Mr. MAGNUSON, Mr. MATHIAS, Mr. METCALF, Mr. MILLER, Mr. MONTOYA, Mr. MUNDT, Mr. MURPHY, Mr. MUSKIE, Mr. NELSON, Mr. PEARSON, Mr. PERCY, Mr. PROUTY, Mr. PROXIMIRE, Mr. RANDOLPH, Mr. SANBEE, Mr. SCHWEIKER, Mr. SCOTT, Mr. SPARKMAN, Mr. SONG, Mr. STEVENS, Mr. TALMADGE, Mr. THURMOND, Mr. TOWER, Mr. TYDINGS, Mr. WILLIAMS of New Jersey, and Mr. YARBOROUGH

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JANUARY 31, 1969

Read twice and referred to the Committee on the  
JUDICIARY

MAY 15, 1970

Reported with amendments

ANALYSIS OF PROPOSED REVISION TO SENATOR ERVIN'S  
ROUGH DRAFT PROPOSED AMENDMENTS TO S. 782\*

Proposed Amendment  
by Senator Ervin

REVISION

EXPLANATION

Sec. 1(k), p. 8, line 5, after  
the word "requests!" strike  
period and insert following:

"": Provided, however, That a  
civilian employee of the United  
States serving in the CIA, the  
NSA, or the FBI may be accom-  
panied by counsel, or by a  
person of his choice who serves  
in the agency in which the  
employee serves, who has been  
cleared as a good security risk  
by that agency for the purpose  
of the case."

Sec. 1(k), p. 8, line 5, after  
the word "requests!" strike  
period and insert following:

"": Provided, however, That a  
civilian employee of the United  
States serving in the CIA or the  
NSA may be accompanied only  
by a person of his choice who  
serves in the agency in which  
the employee serves or by  
counsel who has been approved  
by the agency for access to the  
information involved."

The revision was made for purposes of  
clarification and does not change the  
intent of the original wording. That  
wording connotes a "security clearance"  
a technical term involving a formal  
process intended to control access to  
classified information at a number of  
different levels in an enduring work  
situation. The suggested revision rep-  
resents the more temporary and less  
sweeping needs of the situation, while  
still fully serving the objectives of the  
original language.

\*NOTE:

1. All references to the FBI have been deleted.

2. In addition to the proposed revisions of Senator Ervin's proposed amendments, a revision of section 1(a)  
of the bill has been proposed as follows:

On page 2, line 15, insert after the word "origin" the words "or citizenship" and after the word  
"employee" the words "or person, or of his forebears . . .".

This revision recognizes that where citizenship is not a statutory condition of employment, it, as well as national  
origin, can be an important consideration in determining suitability for a particular assignment for employees and  
applicants, as can the citizenship or national origin of their forebears.

Proposed Amendment  
by Senator Ervin

REVISION

EXPLANATION

Sec. 6, p. 19, at line 2, to read:

"a personal finding with regard to each grade or category of duties that such test or information is required to protect the national security."

Sec. 6, p. 19, at line 2, to read:

["a personal finding that such test or information is required to protect the national security." ]

The revision does not change the underlying concept authorizing a personal finding that tests or examinations are required to protect the national security. Further review of the original language indicates that a grade or category of duties criterion would result in the establishment of arbitrary standards which are unworkable in practical application.

Add a proviso to Sec. 7, p. 19, line 16. After words "Employee Rights:" insert the following:

"Provided further, however, That no civilian employee of the United States serving in the CIA, the NSA, or the FBI shall be permitted to invoke the provisions of sections 4 and 5 unless he has first complained in writing to the agency in which he serves about the threatened or actual violation of this Act and afforded such agency 120 days from the date of such complaint in which to prevent the threatened violation or to redress the actual violation: Provided further, however, That nothing in this Act shall be construed to affect any existing authority of the directors of the

Add a proviso to Sec. 7, p. 19, line 16. After words "Employee Rights:" insert the following:

"Provided further, however, That no civilian employee of the United States serving in the CIA or the NSA, and no applicant for employment with those agencies, and no individual or organization acting in behalf of such employee or applicant, shall be permitted to invoke the provisions of sections 4 and 5 without first submitting a written complaint to the agency concerned about the threatened or actual violation of this Act and affording such agency 120 days from the date of such complaint to prevent the threatened violation or to redress the actual violation:

The revision includes applicants and assures that they are afforded no greater freedom of action than employees; it also binds those acting for applicants and employees to the same procedural rules; provides for extension of the 120 days upon a personal finding by the director of CIA or NSA that more time is necessary to resolve the case; and makes technical changes in the penultimate proviso to conform to 50 USC 833 which reposes the authority to terminate employees of NSA in the Secretary of Defense in the first instance with an authorized delegation to the director of NSA.

Proposed Amendment  
by Senator Ervin

REVISION

EXPLANATION

Central Intelligence Agency under 50 USC 403(c), the National Security Agency under 50 USC 833, and the Federal Bureau of Investigation under 28 USC 536 to terminate the employment of any employee:..."

Provided further, however, That the above period of 120 days may be extended if deemed necessary on a personal finding by the director of the agency involved: [Provided further, however, That nothing in this Act shall be construed to affect any existing authority of the Director of Central Intelligence under 50 USC 403(c) and the authorities available to the National Security Agency under 50 USC 833 to terminate the employment of any employee:..."

On p. 19, line 20, add a new Sec. 8:

"Sec. 8. Nothing in this Act shall be construed to affect in any way the authority of the directors of the CIA, the NSA, or the FBI to protect or withhold government information pursuant to statute or executive order. The personal certification by the director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be receivable in evidence in any interrogation under section 1, subsection (k), or in any civil action under section 4, or in any proceeding or civil action under section 5.

On p. 19, line 20, add a new Sec. 8:

""Sec. 8. Nothing in this Act shall be construed to affect in any way the authority of the directors of the CIA or the NSA to protect or withhold information pursuant to statute or executive order. The personal certification by the director of the agency that disclosure of any information is inconsistent with the provision of any statute or executive order shall be conclusive and no such information shall be admissible in evidence in any civil action under section 4, or in any proceeding or civil action under section 5.

The revision deletes the word "government" in the phrase "government information" to eliminate any possible conflict over the various language, e.g., official information, military information, classified defense information, intelligence sources and methods, used in statute or executive order to describe the information to be protected; and removes, as unnecessary, the restraints on outside counsel receiving classified information during an interrogation under section 1(k).

## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM: Legislative Counsel  
7D35 Hdqs

EXTENSION NO.

TE

STAT

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Mr. Houston

RECEIVED FORWARDER

5/20/70 5/21/70

RULB

2.

3.

Mr. Wettner

5/25/70

JW

4.

OLC

JMM

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Attached is a copy of S. 782 (Ervin bill) amended, as passed by the Senate on 19 May (without record vote or floor discussion) and sent to the House.

On the bill we have underscored in red those passages included at our request.

On the attached analysis we have bracketed language which we had suggested but which was not included in the final version.

JULIA L. WETTNER

1-3 The committee report says we and NSR approved this draft. Not so. Note FCT exception. JMM is get file together with Head & SCA

FORM 610 USE PREVIOUS EDITIONS

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